incurred by C because A's negligence, from which the accident resulted, occasioned these expenses, cannot easily be reconciled with the rule which forbids the entertainment of claims for remotely consequential damages. That B should make an unfounded charge against C can hardly be regarded as a direct or naturally to be contemplated consequence of an act of negligence on the part of A. In the view I take, however, it is unnecessary for the purposes of this case to determine that question.

The facts necessary for the disposal of this case as presented to us are not in dispute. A van belonging to Callaghan, travelling on an open road at a slow pace, suddenly dashed across the road into a bank, with the result that pursuer's husband was killed. Both the pursuer and Callaghan averred that the cause of the aberration of the van was a collision with Bryson's car, for which Bryson was to blame. Bryson denied the occurrence of any collision, but it was proved to the satisfaction of the jury that the collision occurred, and that Bryson was alone to blame for it. Bryson now resists the claim that he should be made liable for Callaghan's expenses on the ground that whilst he denied the occurrence of the collision, he did not at any time in the course of the case or otherwise attribute blame for the accident to Callaghan. But in the circumstances of the case it appears to me that the Lord Ordinary was warranted in construing the attitude of Bryson as placing by implication the blame of the accident upon Callaghan. If Bryson was not to blame Callaghan was *prima facie* to blame. No doubt it is conceivable that such an accident might happen through some strange mischance without blame to anybody. But I am unable to reach the conclusion that the Lord Ordinary, who heard the evidence, was not entitled to refuse to regard the suggestion of such theoretical possibilities as obviating the effect of the *prima facie* charge against Callaghan involved in Bryson's denial of any collision. I am accordingly of opinion that the interlocutor of the Lord Ordinary ought to be affirmed.

The Court adhered.

Counsel for the Defender and Reclaimer Bryson—Mackay, K.C.—Christie. Agents—Manson & Turner Macfarlane, W.S.

Counsel for the Defender Callaghan—Watt, K.C.—Aitchison, K.C.—Montgomery. Agents—Balfour & Manson, W.S.

Counsel for the Pursuer—Maclaren, K.C.—Burnet. Agent—John Baird, Solicitor.

Thursday, July 19.

FIRST DIVISION.

GALASHIELS AND SELKIRK PARISH COUNCILS *v.* SCOTT PLUMMER.

Rates and Assessments — Poor Rates — Deductions — Heritors' Assessments — Minister's Stipend — Poor Law Amendment (Scotland) Act 1845 (8 *and* 9 *Vict. cap.* 83), *sec.* 37.

The Poor Law Amendment (Scotland) Act 1845, sec. 37, provides with regard to the manner in which lands and heritages are to be valued for the purpose of levying the poor rate as follows:—"And be it enacted that in estimating the annual value of lands and heritages the same shall be taken to be the rent at which one year with another such lands and heritages might in their actual state be reasonably expected to let from year to year, under deduction of the probable annual average cost of the repairs, insurance, and other expenses, if any, necessary to maintain such lands and heritages in their actual state, and all rates, taxes, and public charges payable in respect of the same. . . ." *Held* (1) that heritors' assessments were included among the rates, taxes, and public charges which fell to be deducted in estimating the annual value of lands and heritages for the purpose of poor-law rating; but (2) that minister's stipend did not fall to be deducted, it not being a charge on the estate of property in the lands themselves but on the estate of teinds.

The Parish Council of the Parish of Galashiels and the Parish Council of the Parish of Selkirk, *first parties*, and Charles Henry Scott Plummer of Sunderland Hall, *second party*, brought a Special Case for the opinion of the Court upon questions regarding the deductions to be made by the first parties in estimating the annual value of the lands belonging to the second party in their respective parishes for the purpose of levying the poor rates and other rates levied in the same way, and also as to the method by which such charges if deductible fell to be fixed.

The Case stated—"1. The first parties are the rating authorities charged with the duty of levying within their respective parishes the poor, education, and registration rates, and other rates which are levied in the same way as the poor rate. 2. The second party is the proprietor of lands and others lying partly in the parish of Galashiels and partly in the parish of Selkirk, and is liable to be assessed by the first parties for all rates levied in the same way as the poor rate. 3. The second party is liable to pay land tax, heritors' assessments, and minister's stipend in the parish of Galashiels and the parish of Selkirk. 4. In the parish of Selkirk heritors' assessments have been levied twice in the last ten years, namely, on 21st October 1915 and on 20th April 1922. On each occasion the assess-

ment was levied at the rate of 2d. per £1 after deduction of £50 from the rental. In Galashiels parish during the last ten years heritors' assessments were levied in the following years:—1913, 1915, 1916, 1918 (twice), 1919, 1920, and 1922. Small heritors are not assessed in this parish, the assessment being imposed on six heritors. These six are assessed on the old valued rent. . . . 6. Since the passing of the Poor Law Amendment (Scotland) Act 1845 it has been customary in many parishes in Scotland to estimate the deductions from the gross rental of lands and heritages on the basis of a percentage of the gross rental, which percentage of the gross rental was uniformly deducted from the actual gross rental of each assessable subject in arriving at the annual value of such subject for the purpose of levying the poor rate and kindred rates. In some parishes the scale of deduction is uniform for all classes of property, in others it varies according to the nature of the subject. The rate of deduction thus allowed varies over the whole of Scotland from 2½ per cent. to 80 per cent., and in the county of Selkirk alone from 5 per cent. to 47 per cent. In the parish of Galashiels the uniform percentages of the gross rental of each assessable subject allowed for the year 1922-23, as representing the proper deductions under section 37 of the said Act, were—

Lands	15 per cent.
Houses and shops . . .	25 do.
Railways	55 do.
Mills, factories, and gas works	30 do.
Gas and water pipes . .	20 do.
Telephone and telegraph wires	35 do.
Electric mains and generating station	35 do.

(increased to 40 per cent. after appeal)

and in the parish of Selkirk the percentages allowed were—

Lands	5 per cent.
Houses and shops . . .	15 do.
Railways	47 do.
Mills and public works . .	20 do.
Gas and water pipes . .	20 do.
Telephone and telegraph wires	35 do.
Electric mains . . .	40 do.

7. Questions have arisen between the parties as to whether the first parties in estimating the annual value of the lands belonging to the second party in their respective parishes for the purpose of levying the poor, education, and registration rates, and other rates levied in the same way, are bound to deduct the amount of land tax, of heritors' assessments, and of stipend payable by the second party as owner of his said lands, and also as to the method by which such charges, if deductible, fall to be fixed. 8. The first parties maintain that they are not bound to make such a deduction in respect that neither land tax nor heritors' assessments nor stipend are rates or taxes or public charges payable in respect of lands within the meaning of section 37 of the Poor Law Amendment (Scotland) Act 1845. In particular the first parties maintain that the intermittent and special character of heritors' assessments exclude them from such a category, and that stipend is equally excluded, in respect that it represents part of the estate of teinds, and that it is not 'a public charge' payable 'in respect of the lands and heritages' within the meaning of section 37. Further, the first parties maintain that if they are bound to make these deductions their duty under the statute is sufficiently discharged if they make a uniform deduction of a certain percentage of the gross rental of all lands in a particular parish. 9. The second party maintains that land tax, heritors' assessments, and stipend are public charges which the first parties are bound to deduct from the rent within the meaning of section 37 of the Poor Law Amendment (Scotland) Act 1845, and in particular that the intermittency of the heritors' assessments and the fact that there is an estate of teinds make no difference with regard to the heritors' assessments and the stipend. Further, the second party maintains that the proper method of making those deductions is to take the actual amount of those charges appropriate to the assessable subject, and not to make a uniform deduction of a certain percentage from the gross value of all lands in a particular parish."

The *questions of law* were—"1. In estimating the annual value of lands under section 37 of the Poor Law Amendment (Scotland) Act 1845, are the first parties bound to deduct (*a*) land tax, and/or (*b*) heritors' assessments, and/or (*c*) stipend? 2. In the event of the first question being answered in the affirmative in all or any of its branches, is the method of making the deductions or deduction (*a*) to deduct the actual amount of the charges or charge applicable to each subject of assessment, or (*b*) to make in respect of the charges or charge a uniform deduction of a certain percentage from the gross value of all lands in each parish?"

Argued for first party—Heritors' assessments being intermittent in their incidence and depending for recovery on resort to ordinary action were not a "public charge" within the meaning of the Act. Nor was minister's stipend a public charge in respect of the land. It was a charge on the estate of teinds which was distinct from the estate of property. If the burden of stipend fell upon the second party it was not in respect of his ownership of the lands, but because he had acquired the right to the teinds thereof.

Argued for second party—Heritors' assessments and minister's stipend did not differ in character from other rates and taxes. They were payable for a public purpose in respect of lands and heritages and were enforceable by public law. They therefore fell to be included among "rates, taxes, and public charges" within the meaning of section 37 of the Poor Law Act 1845.

The following authorities were referred to — Bell's Prin., section 1122; Rankine's Landownership, pp. 750, 751, 752 (note); *Scottish North-Eastern Railway Company* v. *Gardiner*, 2 Macph. 537; *Macfarlane* v. *Monklands Railway Company*, 2 Macph. 519; *Edinburgh and Glasgow Railway Company* v. *Hall*, 4 Macph. 1006; *Traill*

v. *Dangerfield*, 8 Macph. 579; *Stewart* v. *Parochial Board of Keith*, 8 Macph. 26; *Downie* v. *M'Lean*, 11 R. 47, Lord Justice-Clerk Moncreiff at p. 51, 21 S.L.R. 33; *Galloway* v. *Earl of Minto*, 1920 S.C. 354, 59 S.L.R. 46.

LORD PRESIDENT—This case relates to poor rates and other rates which are levied on the net real rent. For the purpose of assessing such rates the real rent suffers deduction in terms of section 37 of the Poor Law Amendment (Scotland) Act 1845, not only on the probable annual average expenditure necessary to maintain the lands and heritages yielding such rent in their actual state, but also of "all rates, taxes, and public charges payable in respect of the same," *i.e.*, in respect of such lands and heritages. Are the land tax, heritors' assessments, and minister's stipend, or any of them, among the "public charges" to be deducted from the real rent?

As regards land tax, the Parish Councils conceded the point, and it is unnecessary to consider it further.

As regards heritors' assessments and minister's stipend, it is to be observed that the scheme of section 37 is to ascertain in the first instance what rent an ordinary tenant would be willing to pay for the lands and heritages, and then to deduct from that rent the ordinary burdens of maintenance falling upon the owner as such, and also the public charges payable by him, as such owner, in respect of the same. In short, as was pointed out by Lord Justice-Clerk Inglis in *Edinburgh and Glasgow Railway Company* v. *Hall*, 4 Macph. 1006, the conception of net real rent which underlies section 37 is very similar to the conception of the net annual value, familiar as the basis for fixing the price of lands and heritages in the case of sale. What, in other words, is the net rent which the owner of a particular piece of land may ordinarily be expected, as such owner, to draw from it.

In *Hall's* case it was decided that property and income tax being essentially a tax on personal income and capable of being shifted as regards its incidence from the shoulders of a landlord in receipt of rent to those of his creditors to whom he pays interest under deduction of tax, was not a "public charge in respect of land." The distinction was emphasised by reference to the consideration that a rate assessed on the net real rent must be paid by the owner even though it can be demonstrated that he is not actually in receipt of a single penny from the land in respect of which he is chargeable to the rate.

Now it cannot, I think, be disputed that heritors' assessment is one of the burdens payable by the owner of lands and heritages as such. Its imposition is regulated by the Ecclesiastical Buildings and Glebes (Scotland) Act 1868. It owes its origin to the public authority of general statutes, albeit ancient in date; and, except that its incidence is more or less occasional, and that its collection depends on resort to ordinary action for recovery, it does not seem to be distinguishable from any other public charge. It is levied either on the real rent or on the valued rent (section 23). A distinction has been drawn between it and other public rates in connection with clauses of relief from public and parochial burdens in feu-rights. This distinction dates from *Carstairs* v. *Greig* (M. 2333), in which the judgment turned on custom as interpretative of the titles. *Carstairs* v. *Greig* was affirmed in the House of Lords in 3 Paton's App. 675, and Sir John Rankine (Landownership, 4th ed., p. 871) says that this decision has been regarded in practice as ruling the general point in relation to clauses of relief apart from custom. The cases of *Scott* v. *Edmond* (12 D. 1077) and *Wilson* v. *Magistrates of Musselburgh* (6 Macph. 483) support this view; but assuming it to be well founded it is not conclusive of the effect of a statutory direction that all "public charges in respect of the lands" are to form a deduction from the real rent in assessing poor rates and similar public charges. My opinion is that heritors' assessment is as truly a "public charge in respect of the lands" as any local rate.

At first sight minister's stipend might easily be regarded as coming within the same category, for it is obvious that the language of section 37 is intended to be comprehensive. But the language is employed to define a deduction or exception from the assessable rent; and if, on examination, minister's stipend is seen to be not truly a charge on land or the rent of land, the general terms in which the statute defines the deduction of public charges ought not to be stretched so as to include it. *Hall's* case is a warning against the dangers into which a broad construction (such as the words of section 37 undoubtedly suggest) may lead. Minister's stipend is a charge on the teinds, and the teinds are a share of the produce of the lands (vindicable against the intromitter with such produce) which belongs not to the owner of the lands as such, but to the titular, or Crown grantee, or to the owner of the lands, not as such owner, but in virtue of valuation and sale. The estate of teinds, consisting essentially in the peculiar right to step in and appropriate a share of the fruits legally belonging to the owner of the lands which produce them, is thus distinct from the estate of property in the lands themselves. If the owner of the lands is himself vested in this right, it is either as Crown grantee, or as purchaser under a valuation, or as tacksman. In no case does the burden of minister's stipend fall upon him in respect of his ownership of the lands, or in respect that he is creditor in the rents of the lands. The estate of teinds is an heritable estate, but the peculiar right in which it consists is not an immoveable right—in other words, it is not itself land. My opinion therefore is that minister's stipend is not one of the "public charges in respect of the land" which section 37 of the Poor Law Amendment (Scotland) Act 1845 directs to be deducted from the real rent.

I think therefore we should answer question 1 (*b*) affirmatively, and 1 (*c*) negatively. Question 1 (*a*) is superseded by the conces-

sion of the first parties. The parties have not been able to adjust the case so as to make it possible for us to answer question 2 in the form in which it is presented.

LORD SKERRINGTON—I see no reason to doubt that according to the ordinary use of language heritors' assessments fall within the description of "rates, taxes, and public charges payable in respect of" the ownership of lands and heritages. As regards manse assessments Lord Justice-Clerk Moncreiff in *Downie* v. *M'Lean* (11 R. 47, at p. 51) stated—"The burden is thus a tax on real property according to its annual value," and this dictum was approved of by Lord Kinnear in *Heritors of Strathblane*, (1899) 1 F. 523, at p. 533, *aff.* 2 F. (H.L.) 25. In the present case we were not asked to draw a distinction between manse assessments and other heritors' assessments. They are all burdens payable by landowners as such, and are imposed upon them for a public purpose and under the authority of a public law either statutory or customary. Of course I do not refer to an assessment of which it can be predicated that it was a burden "undertaken by the heritors in a voluntary contract" (presumably in a form or at a time not otherwise obligatory)—*Scott* v. *Edmond*, 12 D. 1077, at p. 1084. *Prima facie*, therefore, and in the absence of some special reason to the contrary, heritors' assessments must in my opinion be deducted before arriving at the assessable rental of lands and heritages for the purpose of levying the poor rate. It was suggested in the course of the argument that the practice under section 37 of the Poor Law Amendment (Scotland) Act 1845 had been adverse to the inclusion of heritors' assessments among the deductions from rental. There is, however, no statement of such a practice in the special case, and accordingly it is not necessary to consider whether *contemporanea expositio* could be appealed to as throwing light upon the construction of so recent a statute. Lord Watson's opinion in *Trustees of Clyde Navigation* v. *Laird* ((1883) 10 R. (H.L.) 77, at p. 83) appears to be unfavourable to such a contention. On the other hand there is ample authority to the effect that the actings of the parties to a contract, especially a contract of long-standing duration, are competent and may be valuable evidence of its true meaning. Accordingly, I am not embarrassed by a decision to the effect that clauses of relief against public burdens contained in certain ancient feu-rights did not entitle the feuars to be relieved by the superior from assessments either for rebuilding or for repairing a church, manse, and office-houses—*Bruce-Carstairs* v. *Greig and Others*, M. 2333, *aff.* 3 Pat. App. 675. The Court of Session proceeded partly on the practice in the parishes concerned. Although the grounds upon which the decision was affirmed do not appear from the report, there is nothing to indicate that the House of Lords disapproved of the reasons which influenced the Court of Session, or that they adopted any ground of judgment which would be applicable not merely in the interpretation of a similar obligation of relief but also in a case like the present which, as it seems to me, falls within a different chapter of the law.

As regards stipend, I do not think that it forms a deduction from the rental authorised by section 37 of the Poor Law Act. Stipend is not payable by a landowner as such, but because he has intromitted with or has in some way acquired right to the teinds of his lands. Though the fact is not stated in the special case, it was mentioned in the course of the debate that the second party has a tack of the teinds of his lands from a titular. If that is so, the tack duty (in other words the titular) is burdened with the stipend. Any excess of the stipend over the tack duty must be borne by the second party in respect of his interest not as landowner but as tacksman of the teind.

It follows that the questions of law should be answered as suggested by your Lordship.

LORD SANDS—The first question which we have to consider in this case is whether the second party is entitled to a deduction in respect of heritors' assessments from his assessable rent for the purpose of poor-law rating as being included among "the rates, taxes, and public charges payable in respect of" his lands and heritages—Poor Law Act 1845, sec. 37. These assessments are not a "tax," and I think that there would be some difficulty in treating them as covered by the word "rates." "Church rates," once a contentious *vox signata* in England, has never been an expression familiar in Scotland. Old statutes have recognised the "stenting" of themselves by heritors or parishioners for ecclesiastical fabrics, and modern statutes have recognised "heritors' assessments." But these assessments want certain of the usual incidents of rates. They are not collected by a public officer. There are no shorthand sanctions. There is no obligation under all circumstances upon the heritors to collect the necessary money in this way. There may be only one heritor in the parish. Where there are only a few they may, and sometimes do, contribute the respective amounts required without any formal imposition of an assessment. But if there may be some difficulty as to whether the heritor's contributions to the maintenance of ecclesiastical fabrics are covered by the word "rates" in the statute, there is no doubt that they are a "charge" payable in respect of his lands and heritages. Moreover, they are, as it appears to me, a "public" charge, because they are enforceable in virtue of public law. The only difficulty in giving effect to this view is a series of decisions in which it has been held that under contracts of relief by disponers of land of all public burdens in favour of the disponee, heritors' assessments are not included in the expression "public burdens." These decisions, though doubtless binding as regards the construction of private contracts, are in my view based upon considerations of presumed intention of the contracting parties in the light of the nature and incidence of the burdens, which are not necessarily applicable in the construction of a public

statute. I am not disposed so to apply them, and I am accordingly of opinion that the contention of the second party ought to be sustained.

The more important question in this case is whether in fixing the annual value of his estate as assessable for poor-rate the second party is entitled to a deduction from the assessable rental of his estate of the amount payable to the minister as stipend. Is the stipend a "public charge payable in respect of his lands and heritages" within the meaning of section 37 of the Poor Law Act of 1845?

This Act provided alternative modes of assessment, two of which take account of what was called "means and substance," the third is based exclusively upon the annual value of land and heritages owned or occupied. As had happened in the case of other imposts both in England and in Scotland, the last was found the preferable system and was generally adopted. For the purposes of collection it was much the more convenient, and it was supposed to supply a rough test of ability to pay, though doubtless that test is much ruder in modern than in old times, when land was in Scotland almost the only form of wealth. The present case is not concerned with occupiers' rates, and these may therefore be left out of account. One-half of the total poor-rate for the parish is leviable upon owners, with whom alone we are here concerned. As regards the individual owner, the standard of apportionment is the annual value of his lands, under certain deductions specified in the Act. According to legal theory the annual produce or rent of the estate is ultimately divisible between two persons—the owner of the lands and the titular or owner of the teinds. The Act lays no burden in respect of poor-rates upon the titular. The exemption of the latter from any share of parochial burdens may be an anomaly, but it is a very old one, and was not created by the Act of 1845—Connell on Tithes (vol. ii), p. 81; *Roxburgh* v. *Dice*, (1750) M. 15,665. Accordingly it was not suggested in the argument in the present case that the titular is liable in assessment in respect of the teinds. Nor was it suggested that the amount of the teinds payable to a titular falls to be deducted from the assessable rental in levying the poor-rates. As regards the great majority of the estates in Scotland under present-day conditions, there is no practical separation between the interest in the teinds and the interest in the lands and heritages. But in the eye of the law, though the interests may be in the same person, there are two estates. It is convenient therefore, and it avoids confusion, to figure the case which still occasionally obtains of two different persons as well as two estates. It is also convenient to ignore the possibility, or rather the probability, of the teinds having been valued, and to figure them as one-fifth of the rent. Now the Poor Law has adopted as the standard of assessment for the heritor an annual sum which includes both the four-fifths which the heritor enjoys and the one-fifth for which he has to account to the titular. Apart from the question of stipend the matter is simple enough. But the one-fifth which the heritor has to account for to the titular is generally burdened with payment of stipend to the minister. Obviously (still adhering to theory) this can make no difference to the heritor. He may deem it a hardship that he has to pay the rates in respect of the one-fifth that forms the teind which does not fall to him, but the matter is not affected by the consideration that a burden has been imposed upon the titular's share. The stipend is payable, not out of the four-fifths falling to the heritor, but out of the one-fifth falling to the titular. To avoid circuity of collection it is paid by the heritor, who takes credit for it in accounting for the teind to the titular, and who is liable for it, not in respect of his own four-fifths, but in respect of his intromission with the one-fifth effeiring to the titular. Even under present-day conditions there may be cases where the matter is illustrated free from any complexity. The teinds may be bishop's teinds, payable to the Crown or to the Crown donee, which have not yet been affected by stipend. The heritor pays the amount of this teind to the titular, and he cannot claim the amount as a deduction from his rent assessable for poor-rate. It might happen that an augmentation of stipend was granted which impinged upon these teinds. The heritor would not be affected thereby. He would pay the same amount as before. According to the theory of the second party to this case, however, he would now be entitled to a deduction of the amount of the stipend payable out of the titular's teind as being a public charge upon his lands and heritages.

My view of the matter may be summarised as follows:—(1) The standard of the heritor's assessment for the poor-rate is the rent of the land, from which rent the teind payable to the titular does not form a deduction. (2) Stipend is payable out of the teind payable to the titular and is a charge thereon. (3) Stipend is not therefore a "public charge" upon the heritor's lands and heritages within the meaning of section 37 of the Act of 1845.

Two general observations occur to me. Under the conditions which now obtain the position is artificial. In probably the great majority of cases the stipend is a direct burden upon a person who combines in himself the position of heritor and of titular. The legal principle is, however, too firmly established to yield to anything but direct statutory enactment.

If it could have been shown that in practice since the Act of 1845 stipend had been treated as a deduction, that might have been a factor well worthy of consideration. No suggestion, however, has been made of the recognition of any such practice. My own very distinct impression is that the second party's contention upon this branch of the case is a new idea. It might be none the worse for that if it commended itself as in accordance with legal principle. But for reasons which I have stated it does not appear to me to do so.

I accordingly agree with your Lordship

in the chair as to the manner in which the questions ought to be answered.

LORD CULLEN did not hear the case.

The Court answered question 1 (*b*) in the affirmative and question 1 (*c*) in the negative.

Counsel for First Parties—Lord Advocate (Hon. W. Watson, K.C.)—Murray. Agents—Skene, Edwards, & Garson, W.S.

Counsel for Second Parties—Brown, K.C.—Marshall. Agents—Mylne & Campbell, W.S.

Saturday, July 14.

FIRST DIVISION.

MURDOCH'S TRUSTEES *v.* STOCK'S TRUSTEES.

Marriage Contract — General Assignation in Marriage Contract — Assignation of Share in Trust Estate—Whether Carrying Income, Accumulation of which had become Illegal — Succession — Thellusson Act 1800 (39 *and* 40 *Geo. III, cap.* 98).

A testator in his trust-disposition and settlement directed his trustees to hold the residue of the trust estate for behoof of his widow in liferent and such of his children as should attain the age of twenty-five years in fee. Vesting of each child's share was to take place upon his attaining the age stated, and power was given to make advances to the children in anticipation of the period of vesting or payment. By a codicil the testator restricted the widow's liferent to a fixed amount, and directed the trustees to accumulate any surplus income and invest it along with and as part of the capital of the trust estate, and to deal with it as they were directed to deal with the capital. The testator was survived by his widow and by three sons and two daughters, all of whom attained twenty-five years of age. Each of the daughters by antenuptial marriage contract assigned to marriage-contract trustees all and sundry her "whole share, right, and interest, present, future, and contingent, of and in the whole funds and estate" held in trust by the trustees under the trust-disposition and settlement and codicil, but excepting therefrom any sum which might be paid to her by them "for trousseau or otherwise in anticipation of her marriage" and "by way of income" during the lifetime of the widow. The daughters were to receive the whole annual incomes from the trust estates created by their respective marriage contracts. The surplus income of the residue of the testator's estate, with the exception of certain sums paid to the children, was accumulated and invested by his trustees for twenty-one years after his death, when further accumulations became illegal owing to the operation of the Thellusson Act. The widow was still alive. *Held* that the daughters' shares of the surplus income set free by the operation of the Thellusson Act did not pass under the general conveyances in their respective marriage contracts, but fell to be paid direct to the daughters.

Mrs Catherine Hutchison or Murdoch, widow of the late Alexander Murdoch, and others, the trustees acting under the trust-disposition and settlement of the late Alexander Murdoch, dated 24th February 1898, and relative codicil dated 21st September 1899, *first parties;* the said Mrs Catherine Hutchison or Murdoch and Alexander Norman Murdoch, trustees under an antenuptial contract of marriage between Francis Douglas Stock and Mrs Evelyn Hutchison Murdoch or Stock, daughter of the late Alexander Murdoch, dated 15th November 1909, *second parties;* Stephen Mitchell and others, trustees under an antenuptial contract of marriage between the said Stephen Mitchell and Mrs Helen Beatrice Murdoch or Mitchell, daughter of the late Alexander Murdoch, dated 14th March 1910, *third parties;* and the said Mrs Evelyn Hutchison Murdoch or Stock and Mrs Helen Beatrice Murdoch or Mitchell, *fourth parties,* brought a Special Case for the opinion and judgment of the Court upon questions as to the effect of the operation of the Thellusson Act upon surplus income of the residue of the trust estate of the late Alexander Murdoch.

By his trust-disposition and settlement the late Alexander Murdoch, after giving directions for payment of his debts and certain legacies and annuities, provided as follows:—"(*Fifth*) I direct my said trustees to hold the whole of the free residue and remainder of my estate for behoof of my said wife in liferent for her liferent alimentary use only and to pay to her the free revenue and proceeds thereof so long as she remains my widow and unmarried, burdened always with the maintenance and education of our children in a manner suitable to their station in life while they continue to reside in family with her and are unable to support themselves: (*Sixth*) After satisfying the purposes foresaid and subject to the provisions before made in favour of my wife and my sister, I direct my said trustees to hold the whole residue and remainder of my estate for behoof of such of my children as shall at my death have attained or shall thereafter attain to twenty-five years of age, when their respective shares shall be held to vest equally among them and for behoof of the issue of any child or children who may die before attaining that age, such issue taking the share their parent would have taken if in life: And I direct that in the event of my wife's death or second marriage before all of my children have reached twenty-five years of age the revenue of the shares of such of the children as may not have reached that age shall be paid and applied for their behoof until the capital comes to be payable: And I also direct that it shall be in the power of my trustees, but with consent always of my widow if in life and remaining unmarried and capable of acting, to make advances to or for behoof of any of my children in